



## GOVERNOR'S COORDINATING OFFICES

COMMUNITY INITIATIVES • SERVICE & VOLUNTEERISM • PERFORMANCE IMPROVEMENT  
CRIME CONTROL & PREVENTION • SMALL, MINORITY & WOMEN BUSINESS AFFAIRS  
CHILDREN • DEAF & HARD OF HEARING

To: Justice Reinvestment Oversight Board  
From: Governor's Office of Crime Control & Prevention  
Date: April 19, 2019  
Re: 2019 Legislative Update

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Below please find a brief summary of legislation that was passed in the 2019 legislative session related to the interests of the Justice Reinvestment Oversight Board. All of the legislation listed below has passed, but is still subject to the approval and signature of the Governor. Most of the legislation will not become effective until later this year, unless otherwise noted below.

### Justice Reinvestment Related Legislation

Justice Reinvestment Act - Diminution Credits - Sentencing: House Bill 274 and Senate Bill 327 clarify that changes to the application of diminution credits as a result of Chapter 515 of 2016, also known as the Justice Reinvestment Act (JRA), must be construed prospectively to apply only to inmates who are sentenced or committed to custody on a finding of violation of probation on or after October 1, 2017. The bill may not be construed to result in a recalculated release date for an inmate that is prior to October 1, 2019, or create a cause of action for false imprisonment against the Department of Public Safety and Correctional Services (DPSCS) or a local correctional facility.

Forfeiture Proceeds - Appropriation Percentage and Reporting: Senate Bill 643 Similar to JRA's reinvestment priorities, this bill increases, from 20% to 100%, the amount of controlled dangerous substances (CDS) forfeiture proceeds deposited in the general fund that the Governor must appropriate to the Maryland Department of Health (MDH) for the purpose of funding drug treatment and education programs. The bill also requires the Governor's Office of Crime Control and Prevention (GOCCP) to include in its annual aggregate report on forfeitures, the amount from CDS forfeitures deposited in the State's general fund that were appropriated to MDH for the purpose of funding drug treatment and education programs and how the funds were spent.

## Corrections

Opioid Use Disorder Examinations and Treatment: **House Bill 116** establishes specified programs of “opioid use disorder” screening, evaluation, and treatment in local correctional facilities and in the Baltimore Pre-trial Complex. The program begins in four counties (Howard, Montgomery, Prince George’s, and St. Mary’s counties) and phases in to include all counties and the Baltimore Pre-trial Complex by January 2023. The State must fund the programs of opioid use disorder screening, examination, and treatment of inmates, and the bill establishes requirements for screening and treatment. By November 1, 2020, and annually thereafter, GOCCP must report specified data to the General Assembly from local correctional facilities. A pilot program at the Baltimore Pre-trial Complex terminates September 30, 2023.

## Collateral Consequences

Occupational Licenses or Certificates - Use of Criminal History in Application Determinations: **House Bill 22** prohibits the certain state agencies (listed below) from denying an application for an occupational license or certificate based solely on the applicant’s prior criminal conviction if (1) a period of at least seven years has passed since the applicant completed serving the sentence for the crime, including all imprisonment, mandatory supervision, probation, and parole and (2) the applicant has not been charged with another crime, other than a minor traffic violation, during that time. The bill’s provisions do not apply to a conviction of a crime of violence under § 14-101 of the Criminal Law Article or a conviction of a crime for which registration on the sex offender registry is required. These provisions apply to the Maryland Department of Agriculture; the Maryland Department of the Environment; the Maryland Department of Health; the Department of Human Services; the Department of Labor, Licensing, and Regulation; the Department of Public Safety and Correctional Services; and each unit in those departments.

Postconviction Review - State's Motion to Vacate: **House Bill 874** authorizes a court with jurisdiction over the case, on motion of the State, to vacate a probation before judgment or conviction when (1) there is newly discovered evidence that could not have been discovered by due diligence in time to move for a new trial and creates a substantial or significant possibility that the result would have been different or (2) the State’s Attorney received new information after the entry of a probation before judgment or judgment of conviction that calls into question the integrity of the probation before judgment or conviction. The interest of justice and fairness must also justify vacating the probation before judgment or conviction.

## Pretrial Release

Expansion of Pretrial Release in Garrett and Howard Counties: **House Bill 407 and Senate Bill 217** repeal the authorization for the Garrett County Board of County Commissioners and Sheriff to establish and administer a home detention program and provide for other alternative sentencing options and instead (1) authorize the Garrett County Sheriff to establish and administer programs for pretrial release and work release and (2) require the sheriff to establish and administer a home detention program. **House Bill 1406** authorizes the Howard County Department of Correction to establish and administer community service and pretrial services programs in the same manner as it is authorized to establish and administer a work release program.

Pretrial Release - Sex Offenders: A District Court commissioner is prohibited from authorizing the pretrial release of specified individuals, including a defendant who is registered as a sex offender in Maryland. **Senate Bill 228** prohibits a District Court commissioner from authorizing the pretrial release of a defendant who (1) is registered as a sex offender in Maryland or (2) the commissioner knows is required to register as a sex offender in Maryland. Pursuant to existing statute, a judge may authorize the pretrial release of such a defendant on suitable bail, any other condition that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community, or a combination of bail and these conditions. There is a rebuttable presumption that the defendant will flee and pose a danger to another person or the community. A judge must order the continued detention of the defendant if the judge determines that suitable bail and/or conditions will not reasonably ensure that the defendant will not flee or will not pose a danger to another person or the community.

## **Victims Rights, Services, and Compensation**

Criminal Injuries Compensation Board - Claims - Electronic Filing: **Senate Bill 61** authorizes the electronic filing of a claim to the Criminal Injuries Compensation Board (CICB), in the manner provided under procedures established by CICB, for compensation under the Criminal Injuries Compensation Fund (CICF).

Criminal Injuries Compensation Board - Compensation to Claimants: **House Bill 968** increases the maximum amount of specified claims to CICB and authorizes CICB to negotiate a settlement with a person that has provided funeral or death-related services in relation to the death of a victim. The bill also (1) alters the timeframes in which a claimant must file a claim for compensation from CICB; (2) authorizes the electronic filing of a claim to CICB, in the manner provided under procedures established by CICB for compensation under CICF; and (3) expands application of specified CICB claim requirements and prohibitions to include funeral or

death-related services. The provisions increasing the maximum amount of specified claims and authorization for CICB to negotiate a specified settlement are prospective and do not apply to any claim due to a crime committed before the bill's January 1, 2020 effective date.

Child Advocacy Centers - Expansion: **House Bill 1007 and Senate Bill 739** require GOCCP to ensure that every child in the State has access to a child advocacy center. GOCCP must also contract with a nonprofit organization to establish a statewide organization to provide training, technical assistance, data collection, and capacity building to meet local, State, and national requirements for child advocacy centers. The statewide organization must establish standards for child advocacy centers in the State that meet national accreditation standards and include specified items, including cultural competency and diversity, medical evaluations, mental health services, a formal case review process, and forensic interviews that are neutral, fact finding, and avoid duplicative interviewing. The bills also alter and establish numerous requirements for child advocacy centers in the State, including (1) requiring child advocacy centers to provide a level of care that meets or exceeds national accreditation standards and (2) requiring money for child advocacy centers to be distributed in accordance with a formula agreed on by the statewide organization and GOCCP.

Violation of Conditions of Release-Stalking: **Senate Bill 138** adds the crime of stalking under § 3-802 of the Criminal Law Article to the list of charges for which a person is statutorily prohibited from violating a condition of pretrial or post trial release that prohibits contact, harassment, or abuse of the alleged victim or going in or near the alleged victim's residence or place of employment. Pursuant to existing statute, violators are guilty of a misdemeanor, punishable by up to 90 days imprisonment. A police officer is authorized to make a warrantless arrest if the officer has probable cause to believe that the person has violated a condition of pretrial or post trial release under these circumstances.

## **Behavioral Health and Criminal Justice**

Decriminalization of Attempted Suicide: **House Bill 77** decriminalizes attempted suicide and abrogates and repeals the common law offense of attempted suicide. While Maryland's criminal statutes do not prohibit attempted suicide, attempted suicide has remained a crime in Maryland because the State recognizes common law crimes. However, the bill provides that it may not be construed to prohibit a person who commits one or more crimes in the course of attempting to commit suicide from being charged with the other crime or crimes.

Decriminalization of Alcoholic Beverages Offenses: **House Bill 88** establishes that it is a code violation and a civil offense, rather than a criminal misdemeanor offense, to (1) consume an

alcoholic beverage in public or (2) possess an alcoholic beverage in an open container. Violators are required to be issued citations and subject to a maximum fine of \$100, the same monetary penalties for these offenses under existing law.

## **Criminal Law- Sentencing Expansions**

Civil Gaming Offense: **House Bill 113 and Senate Bill 842** decriminalize and/or alter the penalties for various betting/gambling-related offenses under §§ 12-102 and 12-103 of the Criminal Law Article. Offenses under § 12-102 involving running illegal gambling operations remain a misdemeanor, but the sentence is reduced to imprisonment for up to 6 months and/or a fine up to \$5,000. Adjudication of the civil offenses established under the bill is not a criminal conviction for any purpose and does not impose any of the civil disabilities that may result from a criminal conviction. The bill (1) clarifies provisions regarding the issuance of citations for these civil offenses; (2) requires a uniform citation for this offense, to be prescribed by the District Court; and (3) requires the Chief Judge of the District Court to establish a schedule for the prepayment of a fine imposed for a violation.

Electronic Harassment and Bullying (Grace's Law 2.0): **House Bill 181 and Senate Bill 103** make several changes to the prohibitions against electronic harassment and bullying, including establishing that a person may not violate the prohibitions with the intent to induce a minor to commit suicide. A person who violates the prohibitions with the intent to induce a minor to commit suicide is guilty of a misdemeanor, punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine. All other violations are misdemeanors, punishable by imprisonment for up to three years and/or a \$10,000 maximum fine.

Threat of Hate Crimes: **House Bill 240 and Senate Bill 232** prohibit a person from threatening to commit a violation of specified hate crimes relating to damaging property of a religious entity, obstructing the free exercise of religious beliefs, harassment or destruction of property, or damage to an associated building

Threat of Mass Violence: **House Bill 420 and Senate Bill 139** alter the existing statutory prohibition on knowingly threatening to commit or threatening to cause to be committed a crime of violence, as defined in § 14-101 of the Criminal Law Article, by prohibiting a person from making such a threat that would place five or more people at substantial risk of death or serious physical injury if the threat were carried out. A violator is guilty of a misdemeanor, punishable by the existing statutory penalties of imprisonment for up to 10 years and/or a fine of up to \$10,000. These bills are effective upon enactment.

Sale of a Minor - Felony: **House Bill 481** reclassifies the prohibition against selling, bartering, or trading a minor for money, property, or anything else of value from a misdemeanor to a felony. Violators are subject to existing penalties of imprisonment for up to five years and/or a \$10,000 maximum fine.

Solicitation and Conspiracy to Commit Murder Resulting in Death (Stacey's Law): **House Bill 493 and Senate Bill 198** clarify that a person who solicits another or conspires with another to commit murder in the first degree is guilty of murder in the first degree if the death of another person occurs as a result of the solicitation or conspiracy. A person who commits a murder in the first degree is guilty of a felony and on conviction must be sentenced to imprisonment for life, with or without the possibility of parole.

Sexual Contact With an Animal – Aggravated Cruelty to Animals: **House Bill 641** expands the prohibition against aggravated cruelty to animals to include engaging in sexual contact with an animal, as specified. Under the bill, a person who engages in sexual contact with an animal is guilty of the felony of aggravated cruelty to animals and is subject to maximum penalties of three years imprisonment and/or a \$5,000 fine.

Labor Trafficking (Anti-Exploitation Act of 2019): **House Bill 734 and Senate Bill 689** establish the offense of labor trafficking, a felony punishable by imprisonment for up to 25 years and/or a \$15,000 maximum fine.

Human Trafficking and Prostitution Offenses: **House Bill 871 and Senate Bill 690** recodify prohibitions relating to prostitution and human trafficking, and distinguish and rename conduct referred to in existing law as “human trafficking” to instead be “sex trafficking” and “forced marriage.” The bills group the offenses of sex trafficking and forced marriage under a new subtitle designation, “Human Trafficking.” The prohibition on sex trafficking is expanded by making it a felony to violate the prohibition with the use of, or intent to use, force, fraud, or coercion. Additionally, the bills provide that it is not a defense to the crime of abduction of a child younger than age 16 that the defendant did not know the age of the victim. The bills also add felony offenses under the new Human Trafficking subtitle to the definition of a “crime of violence” under the Criminal Law Article and the Public Safety Article.

Crime of Violence Against Pregnant Person – Enhanced Penalty (Laura and Reid's Law): **Senate Bill 561** prohibits a person from committing a crime of violence, as defined in § 14-101 of the Criminal Law Article, against another person when the person knows or believes that the other person is pregnant. A person who violates the prohibition is guilty of a felony and, in addition to any other penalty imposed for the underlying crime of violence, is subject to a maximum penalty of 10 years imprisonment.

## **Criminal Procedure**

Charge by Citation - Violation of Condition of Release: If a defendant meets specified statutory criteria, State law requires a police officer to charge by citation (1) any misdemeanor or local ordinance violation that does not carry a term of imprisonment; or (2) any misdemeanor or local ordinance violation for which the maximum penalty is 90 days imprisonment or less, with specified exceptions. **House Bill 121 and Senate Bill 130** amend § 4-101(c) of the Criminal Procedure Article to reflect recent changes to statute by designating a violation of a condition of pretrial or post trial release under § 5-213.1 of the Criminal Procedure Article as a crime for which a police officer may not charge by citation.

Sexual Assault Evidence Collection Kits - Analysis: **House Bill 1096/Senate Bill 767** require a sexual assault evidence collection kit to be submitted to a forensic laboratory for testing unless specified requirements are met. The bills (1) require a law enforcement agency to submit a sexual assault evidence collection kit and Part E – Crimes, Corrections, and Public Safety E-7 all requested associated reference standards to a forensic laboratory within 30 days of receipt; (2) require a forensic laboratory to process a sexual assault evidence collection kit and all requested associated reference standards in a timely manner; and (3) establish that the failure to complete the screening, testing, and analysis of a sexual assault evidence collection kit and all requested associated reference standards in a timely manner does not constitute the basis for excluding the analysis or results as evidence in a criminal proceeding. The bills also require (1) the Attorney General to adopt implementing regulations by December 1, 2019, and (2) the Maryland Sexual Assault Evidence Kit Policy and Funding Committee to establish an independent process to review and make recommendations relating to when a law enforcement agency may decide not to test a sexual assault evidence collection kit.

## **Studies, Task Forces, and Data Availability**

Crime Classification: **House Bill 542** establishes the Task Force to Study Crime Classification and Penalties. The task force is required to review criminal and civil violations throughout the Maryland Code and make recommendations regarding the current statutory scheme for criminal and civil violations to the Governor and General Assembly by December 31, 2020.

Juvenile Justice Reform Council: **House Bill 606 and Senate Bill 856** establish the Juvenile Justice Reform Council, which is to be staffed by the Department of Legislative Services. The council must convene an advisory stakeholder group and work with the group to conduct roundtable discussion forums seeking public input in all geographic regions of the State. The

council must also (1) use a data-driven approach to develop a statewide framework of policies to invest in strategies to increase public safety and reduce recidivism of youth offenders; (2) research best practices for the treatment of juveniles who are subject to the criminal and juvenile justice systems; (3) identify and make recommendations to limit or otherwise mitigate risk factors that contribute to juvenile contact with the criminal and juvenile justice systems; and (4) request technical assistance from the Abell Foundation, the Annie E. Casey Foundation, the Council of State Governments, the Vera Institute of Justice, or another similar organization. By December 1, 2019, the council must submit an interim report to the Governor and the General Assembly; a final report is due by December 1, 2020.

Inmate Labor: **House Bill 78 and Senate Bill 527** expand the information that must be included in the Commissioner of Correction Annual Report and the DOC Financial and Operational Report to include information relating to inmate employment and wages, including the following additional information:

- the job classifications for inmate labor in each department and facility;
- the daily wage scale at each prison for each job classification; and
- the total number of inmates currently employed at facilities, disaggregated by facility.

Restrictive Housing - Reporting by Correctional Units and Requirements Relating to Minors: **House Bill 1001 and Senate Bill 774** expand the entities required to submit information relating to inmates in restrictive housing to GOCCP and repeal the requirement that the information also be submitted directly to the General Assembly. Instead of the Department of Public Safety and Correctional Services (DPSCS), each correctional unit must submit that information to GOCCP, and when GOCCP has received the information from every correctional unit, GOCCP must promptly submit the information in a report to the General Assembly. The bills additionally prohibit a correctional unit from placing a minor in restrictive housing, with specified exceptions. A minor placed in restrictive housing must be provided specified conditions and privileges and, if those conditions or privileges are not provided, the managing official or the managing official's designee must record the reason in the minor's file.

Race-Based Traffic Stops – Policy and Reporting Requirements: Generally, since 2002 (and phased in over a three-year period based on agency size), Maryland law enforcement agencies have been required to collect and report traffic stop data. Initially, data collection and related reporting was required for a five-year period, but the requirement has been extended (or reestablished) multiple times, most recently with a termination date of May 31, 2020. **House Bill 301 and Senate Bill 417** make permanent the data collection and reporting program related to race-based traffic stops by repealing its termination date. In addition, Senate Bill 417 repeals a requirement that MSAC report the data annually to the Governor and the General Assembly and instead requires MSAC to post data from the previous calendar year on its website in a location



that is easily accessible and in a manner that is filterable by location and other factors. The bill also requires the Governor's Office on Crime Control and Prevention (GOCCP) to provide written notice to the General Assembly when MSAC updates the information.

Reporting of Hate Crimes: **House Bill 168** alters and expands the categories of incidents for which each local law enforcement agency and the State Fire Marshal must report to DSP and for which DSP must collect, analyze, and report to the Maryland Commission on Civil Rights. The altered/expanded categories include incidents apparently directed against an individual or group because of color, religious beliefs, gender, disability, national origin, and homelessness.

### **Policy Priorities**

In addition to the above detailed legislation that did pass, there was significant interest in the legislature surrounding the following topics, in the form of the creation of additional programs or introduced legislation that did not pass. These topics may merit further study by the Board in the coming year:

- Expansion of Crisis Intervention Teams (CIT)
- Expansion of offense eligible for expungement
- Expansion of juvenile diversion programs